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OTHER ISSUES

Systematic rape, sexual slavery and slavery-like practices during armed conflicts

Report of the High Commissioner for Human Rights

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Introduction

1. At its fifty-first session, the Sub-Commission, in its resolution 1999/16, called upon the High Commissioner for Human Rights to submit a report to the Sub-Commission at its fifty-second session on the issue of systematic rape, sexual slavery and slavery-like practices in situations of ongoing conflict, including information on the status of the recommendations made by the Special Rapporteur of the Sub-Commission. The Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict was also requested to submit an updated report to the Sub-Commission at its fifty-second session.

2. In compliance with those requests, the Special Rapporteur submitted her updated report (E/CN.4/Sub.2/2000/21) and the High Commissioner submitted her report (E/CN.4/Sub.2/2000/20), which was based on the most recent activities of treaty monitoring bodies, special rapporteurs and the Commission on Human Rights and provided information on specific conflict situations available from those sources.

3. At its fifty-second session, the Sub-Commission, in its resolution 2000/13, called upon the High Commissioner for Human Rights to monitor the implementation of that resolution as well as resolution 1999/16 and to submit a report to the Sub-Commission at its fifty-third session on the issue of systematic rape, sexual slavery and slavery-like practices in situations of ongoing conflict, including information on the status and implementation of the recommendations made by the Special Rapporteur in her report on systematic rape, sexual slavery and slavery-like practices during armed conflicts (E/CN.4/Sub.2/1998/13) and the update thereto (E/CN.4/Sub.2/2000/21).

4. The present report is submitted in accordance with that request and updates the information contained in the High Commissioner's previous report.

5. As mentioned in last year's report, during past, recent and ongoing conflicts, sexual violence has been used as a weapon of war; a method of threatening populations. Conflicts, both internal and international, are increasingly affecting civil populations and systematic rape is often being used to humiliate civilians and military personnel, to destroy the society and diminish prospects for a peaceful resolution of the conflict. The first victims of these crimes are women and girls.

6. Gender-based violence is a consequence of the lower status of women and girls in society. Women and girls are subordinated, devalued and discriminated against, to varying degrees, in all societies.

7. Armed conflicts exacerbate discrimination and violence directed at women and all recent internal and ethnic-based conflicts have illustrated this fact. Rape and other sexual violence against women and girls is used as a weapon of war. To end the cycle of violence, the equal rights of women to participate in the economic, social, political and cultural life of their societies must be promoted and protected. Without the full equality and participation of women, the empowerment of women, the rehabilitation of women's image, allowing women to develop confidence and respect for themselves and enabling them to realize their full potential and

acknowledging the full value of the contribution they make to the well-being, security and progress of society, any measure taken to prevent the systematic rape of women during armed conflicts, in fact any form of gender-based violence, will fail.

8. The most recent conflicts have been the scene of brutal attacks against civil populations, especially women and children. All kinds of sexual violence, including assault, rape, abuse and torture of women and children, have been used in a more or less systematic manner to terrorize civilians and destroy the social structure, family structure and pride of the enemy. Because of its nature, the consequences of sexual violence extend well beyond those of other forms of violence. The severe physical and psychological trauma to which victims are subject endanger not only personal recovery but post-conflict reconstruction of the whole society. It is essential that the international community carefully address this serious and systematic violation of the most basic human rights and consider measures aimed at preventing such practices and assisting the victims.

I. STEPS TAKEN BY HUMAN RIGHTS TREATY BODIES

Human Rights Committee

9. In March 2000, the Human Rights Committee adopted a comprehensive new general comment on gender equality (CCPR/C/21/Rev.1/Add.1), in which it stated that gender equality is an overarching principle that applies to the enjoyment of all rights, civil, political, economic, social and cultural. The right to gender equality is not merely a right to non-discrimination; affirmative action is required. In that regard, and bearing in mind that women are particularly vulnerable in times of internal or international armed conflicts, States must take special measures to protect women from rape, abduction or other forms of gender-based violence and should inform the Committee of those measures.

10. In the list of issues addressed to it, Croatia was requested to provide information on the progress that had been made in investigating and prosecuting members of the police, security and armed forces and others who had committed offences of rape and other violence against women, and other crimes against the civilian population in the period of armed conflict (CCPR/C/71/L/HRV, para. 9).

11. There have been many developments in the area of gender-related torture and ill-treatment. The Human Rights Committee, for instance, recently commented significantly on article 3 of the Covenant on Civil and Political Rights, which addresses equality between men and women. Women are considered particularly vulnerable during internal or international armed conflicts, and the Human Rights Committee identified the State's obligation to protect women from rape, abductions and other forms of gender-based violence, which could constitute torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee noted what conditions and issues should be reported by States under articles 7 and 10 of the Covenant with regard to national law and practice regarding domestic violence and violence against women, including rape. It also inquired into State efforts to prevent forced abortions or sterilization, and regularly seeks information on the treatment of detained persons deprived of their liberty on such questions as whether men and women are

separated in prisons, whether women are guarded by female warders, whether juveniles are separated from adults, whether men and women enjoy equal access to the courts and whether their testimony is of equal value.

Committee on the Elimination of Discrimination against Women

12. In considering the report of Myanmar, the Committee on the Elimination of Discrimination against Women recommended that the Government take the necessary steps to put an end to violence against women, the acts of rape perpetrated by the army and the trade in women and children, to reduce the incidence of AIDS among the female population, to improve conditions of detention, lower the high maternal mortality rate and broaden women's access to higher education and skilled employment.

Committee on Economic, Social and Cultural Rights

13. One of the most traumatizing consequences of rape and sexual violence is pregnancy, and the non-availability of safe and legal means of terminating pregnancies resulting from rape. The representative of the Democratic Republic of the Congo, presenting her country's report to the Committee on Economic, Social and Cultural Rights, acknowledged that many women had been raped during the recent disturbances there and that the situation was made worse by the fact that abortion was prohibited save when the mother's health was endangered. In response to pressure from women's organizations, the Government was looking into the situation in other countries, for example Cameroon, where abortion was authorized in cases of rape (E/C.12/2000/SR.17, para. 9).

II. STEPS TAKEN BY HUMAN RIGHTS MECHANISMS AND PROCEDURES

14. In examining the reports submitted by some of the special rapporteurs, both country and thematic, common concerns and conclusions emerge. It is notable that gender-based violence is more frequently mentioned than before among human rights violations. Reports recount cases of women being targeted in various types of conflicts, using various forms of violence; women are raped, sexually abused, beaten, tortured and killed. Rape is being used more frequently as a tactic of war. Various special rapporteurs have mentioned the particular vulnerability of women widowed by war. Most of the special rapporteurs also mention the issue of sexual violence against women within the family.

15. This section provides an overview of situations of gender-based violence examined by special rapporteurs, or the High Commissioner for Human Rights in the ongoing or recent conflicts in Afghanistan, Chechnya, Sierra Leone, East Timor and Uganda, which have all been the subject of attention on the part of the mechanisms. It also refers to recent reports submitted to the Sub-Commission which make reference to sexual slavery.

16. In her report to the Commission on Human Rights at its fifty-seventh session on the situation of human rights in Sierra Leone (E/CN.4/2001/35), the High Commissioner referred to various reports of the Secretary-General to the Security Council. It was mentioned that human rights assessment missions conducted by the human rights section of the United Nations Mission in Sierra Leone (UNAMSIL) in the aftermath of the resumption of conflict in May had reported

several cases of rape and sexual abuse of women, a hallmark of the Sierra Leone conflict. Five women from Kampa (near Rogberi Junction) were abducted by Revolutionary United Front (RUF) elements and raped in May 2000. Three of the women interviewed were lactating at the time of the incident and two had to leave their babies with family members. The women were beaten with rifles. During a period of three days, six different men had raped one of the women who was interviewed. Two different men raped another of the women twice. In Makeni, a nurse reported that 20 cases of rape, including of girls under 18, had been treated in April and May at the local clinic. Another government health worker had treated 19 cases of rape of girls under 18 in the Mile 91 area. Medical sources indicated that most internally displaced women had contracted sexually transmitted diseases, frequently as a result of rape.

17. The Special Representative of the Secretary-General on children and armed conflict, Mr. Olara Otunnu, relayed several disturbing experiences, including his visit to the Murray Town Camp for Amputees in Freetown. The camp accommodates and provides rehabilitation training to some 260 victims of amputations and 100 war wounded, many of whom are children. The youngest child he met, Abu, then 10 months old, had had his legs cut off by rebels when he was just two months old. The Special Representative stated that many children had been deliberately maimed, their limbs brutally cut off. In the month of January 1999 alone over 4,000 children were abducted during the incursion of the RUF and the Armed Forces Revolutionary Council (AFRC) into Freetown. He indicated that informed estimates suggested that 60 per cent of the abducted children were girls, most of whom had been sexually abused (E/CN.4/2001/35, para. 25).

18. The Special Rapporteur on violence against women noted in her report to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/73) that violence against women and girls had continued unabated during the period covered by her report (1997-2000). Unimaginable brutality was perpetrated against women and girls in conflicts ranging from Afghanistan to Chechnya, from Sierra Leone to East Timor. The report, which addresses the issue of women and armed conflict, illustrates how, since 1997, women and girls have been raped by government forces and non-State actors, by police responsible for their protection, by refugee camp and border guards, by neighbours, local politicians, and sometimes family members under threat of death. They have been maimed or sexually mutilated, and often later killed or left to die. Women have been subjected to humiliating strip searches, forced to parade or dance naked in front of soldiers or in public, and to perform domestic chores while nude. Women and girls have been forced into "marriages" with soldiers, a euphemistic term for what is essentially repeated rape and sexual slavery, and they and their children have suffered disabilities as a result of exposure to chemical weapons.

19. The Special Rapporteur on violence against women gave special attention in the report to the specific risks faced by girl children during armed conflict and the specific gaps in protection and assistance to women who are internally displaced. She also underscored her growing alarm about women being trafficked from refugee camps and other shelters set up for their protection, as well as being trafficked to service United Nations peacekeepers in countries where such peacekeepers are located. In particular, the Special Rapporteur expresses concern about the growing number of reports of rape and other sexual abuse committed by United Nations

peacekeeping forces and staff, and by soldiers and staff associated with military bases around the world, and emphasized the particular responsibility that the Organization has for taking appropriate steps to prevent such abuse.

20. In his additional report to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/76), the Special Representative of the Secretary-General for Children and Armed Conflict noted that, unlike the International Criminal Tribunals for Rwanda and Yugoslavia, which are subsidiary organs of the United Nations, the Special Court for Sierra Leone is a treaty-based, sui generis, court of mixed composition and mixed jurisdiction. Pursuant to Security Council resolution 1315 (2000) the Secretary-General proposed a Statute for the Special Court after conducting extensive negotiations with the Government of Sierra Leone. As proposed by the Secretary-General in his report to the Security Council of 4 October 2000 (S/2000/915), the Court will try crimes committed in Sierra Leone after 30 November 1996 - when the first comprehensive peace agreement between the Government and the Revolutionary United Front (RUF) was concluded - including mass killings, mutilations and amputations, extrajudicial executions, torture, rape and sexual slavery, intentional attacks on civilian populations, abduction, hostage-taking, forced recruitment of children under 15 years into military or militia forces and widespread arson. The primary targets will be those persons most responsible for these crimes.

21. The Office of the Special Representative has also worked with the Special Rapporteur on violence against women - whose 2001 report to the Commission addresses the theme of women and armed conflict. The report highlights the particular plight of girls who have suffered abuses such as rape and sexual molestation during armed conflict and the difficulties they experience in reintegrating into their families and communities in the aftermath of war. The Office of the Special Representative encouraged the Special Rapporteur to refer in her next report to Security Council resolutions 1261 (1999) and 1314 (2000) and to the pertinent parts of the report of the Secretary-General on children and armed conflict, and furnished her with bibliographical and other background materials.

22. Furthermore, the Representative of the Secretary-General on Children and Armed Conflict mentioned that innocent civilians, including women and children, in northern Uganda are caught between the brutality of the Lord's Resistance Army (LRA) and the abuse of the armed forces. It is estimated that thousands of children have been abducted and forced to join LRA since 1988. Most of the abductees - who may have witnessed the murder of their kin and who are forced into servitude as soldiers, porters, cooks and sexual slaves - remain in the hands of LRA. Many of these children have been forced to commit brutal crimes against their peers and communities. At least 100,000 children live under the constant threat of abduction.

23. Moreover, in their updated review of the implementation and follow-up to the conventions on slavery submitted to the Sub-Commission at its fifty-second session (E/CN.4/Sub.2/3 and Add.1), Mr. David Weissbrodt and Anti-Slavery International pointed out that sexual slavery, the sexual exploitation of individuals through the use or threat of force, is related to prostitution, though distinct in that there need not be any "reward or profit". This concept of sexual slavery has been recognized in national courts. For example, in United States v. Sanga 967 F.2nd 1332 a man forced a woman to work as a domestic maid for over two years and forced her to have sex with him. The United States Court of Appeals for

the 9th Circuit unanimously held that she was a "virtual slave" contrary to the provision of the Thirteenth Amendment to the United States Constitution, which prohibits slavery and involuntary servitude.

24. Mr. Weissbrodt and Anti-Slavery International also pointed out (E/CN.4/Sub.2/2000/3/Add.1, para. 58) that abuse and systematic rape of women have long been used as a means of warfare; yet it is only in more recent international documents that references to "sexual slavery" emerge. For example the issue has been mentioned in a report of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1996/63); also in a report of the Special Rapporteur on the situation of human rights in Rwanda (E/CN.4/1996/68). The Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during times of war has pointed out that detaining women in "rape camps" or "comfort stations" [and] forced temporary "marriages" to soldiers are both in fact and law forms of slavery contrary to the international standards (E/CN.4/Sub.2/1998/13, para. 8). The instance of rape and abuse of women in the areas of armed conflict in the former Yugoslavia was highlighted in a report of the Secretary-General (A/51/557) which cites General Assembly resolution 50/192 strongly condemning the abhorrent practice of rape and abuse of women and children in the area of armed conflict in the former Yugoslavia and reaffirming that rape in the conduct of armed conflict constituted a war crime. The Vienna Declaration and Programme of Action confirms that "all violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response" (para. II. 38).

III. STEPS TAKEN BY THE COMMISSION ON HUMAN RIGHTS

25. At its fifty-seventh session, the Commission on Human Rights referred to the issue in its resolutions on the rights of the child (2001/75) and violence against women (2001/49). In resolution 2001/49, the Commission condemned violence against women committed in situations of armed conflict, such as murder, rape, sexual slavery and forced pregnancy, and called for effective responses to these violations of international human rights and humanitarian law. The Commission also welcomed the inclusion of gender-related crimes in the Rome Statute of the International Criminal Court and its Elements of Crimes document, and urged States to consider ratifying or acceding to the Rome Statute of the International Criminal Court.

26. Also during its fifty-seventh session, the Commission voiced particular concern regarding violations of women's rights in specific countries, including the Democratic Republic of the Congo, Sierra Leone, Afghanistan and Myanmar.

IV. THE INTERNATIONAL CRIMINAL COURT, THE INTERNATIONAL CRIMINAL TRIBUNALS AND INTERNATIONAL HUMANITARIAN LAW

27. In the report of the Secretary-General to the Commission on Human Rights at its fifty-seventh session on fundamental standards of humanity (E/CN.4/2001/91), it was noted that, in the provisions regarding the crime of genocide, the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Statute of the International Criminal Tribunal for Rwanda (ICTR) and the Statute of the International Criminal Court all restate the definition

of genocide found in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. The crime of genocide has, however, been interpreted and developed in recent case law. ICTR gave the first judicial interpretation of the 1948 Genocide Convention in the *Akayesu* case. The Trial Chamber adopted a broad interpretation of genocide, including rape and sexual violence when committed with the intent to destroy in whole or in part a covered group. The Trial Chamber also interpreted the offence of "direct and public incitement to commit genocide" as entailing a provocation to commit genocide "whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication".

28. In its decision of 2 September 1998, in *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, (para. 688: the Trial Chamber stated: "The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."

29. It should also be mentioned that the ICTY, in the Foca trial acknowledged that rape and sexual enslavement are crimes against humanity (IT-96-23 and IT-96-23/1 of 22 February 2001). Three men prosecuted were found guilty of rape, classified as a crime against humanity and a war crime. Two of the accused were also found guilty of sexual enslavement as a crime against humanity by holding women and girls captive in a number of de facto detention centres in and around Foca in Eastern Bosnia and Herzegovina.

30. The use of sexual slavery in any form during times of armed conflict - rape camps, comfort stations, or other forms of sexual abuse - constitutes a grave breach of international humanitarian law. Armed conflict, including occupation of territories, tends to result in increased sexual violence, in particular against women, which requires specific protective and punitive measures.

31. Common article 3 to the four Geneva Conventions prohibits all parties to a conflict from perpetrating "outrages upon personal dignity, in particular humiliating and degrading treatment". Common article 3 has over time been interpreted to include sexual slavery (see preliminary report of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, Ms. Linda Chavez (E/CN.4/Sub.2/1996/26)). Article 147 of the Fourth Geneva Convention, which deals with "grave breaches," includes "torture or inhuman treatment ... wilfully causing great suffering or serious injury to body or health". Additional Protocols I and II contain prohibitions against any form of indecent assault, especially of women and children.

V. CONCLUSIONS

32. Already in her 1999 statement to the Security Council at the presentation of the report of the Secretary-General on the protection of civilians in armed conflicts (16 September 1999), the High Commissioner for Human Rights stated: "civilians are no longer just victims of war - today they are regarded as instruments of war. Starving, terrorising, murdering, raping civilians - all are seen as legitimate. Sex is no defence nor is age; indeed it is women, children and the elderly who are often at greatest risk. That is a strange, terrible state of affairs."

33. The inclusion in the ICC statute of special provisions on rape, sexual assault and gender-related crimes reflecting the recommendations made by the Office of the High Commissioner for Human Rights, is a major advance. Moreover, the verdict of the ICTY in the Foca case, acknowledging that rape and sexual enslavement are crimes against humanity, is a significant step for the protection of women's human rights as it challenges widespread acceptance that torture, rape and violence against women are an intrinsic part of war and conflict and holds perpetrators of such crimes accountable.

34. Conventional and extra-conventional human rights mechanisms should continue and strengthen their consideration of all gender-based violations of human rights. To end impunity for acts of sexual violence and sexual slavery during armed conflict, political will and concerted action on the part of the international community, Governments and non-governmental actors are required.

35. While international and humanitarian law are applicable to perpetrators of sexual violence and slavery, the specifically gender-related nature and consequences of these crimes require that the gender aspect of these crimes be taken into account in all legal and extralegal responses, including prevention, investigation, prosecution, compensation and rehabilitation.